

request, either personally or through a representative, with the Examiner (State Supervisor), U.S. Office of Personnel Management, in the State involved at the address set out in appendix C to this part and incorporated in and made a part of this section. The request shall be submitted within 10 days from the date of the notice of ineligibility for listing. The request shall set forth the applicant's reason for contesting the notice of ineligibility for listing. The Examiner (State Supervisor) shall notify the applicant or his representative and the examiner concerned of his decision. When the Examiner (State Supervisor) finds the applicant has the prescribed qualifications, he shall direct the examiner concerned to give the applicant a certificate evidencing his eligibility to vote and to enter his name on the eligibility list. There is no administrative appeal from the decision of an Examiner (State Supervisor).

§ 801.207 Certification and publication of eligibility lists.

An examiner shall certify and transmit an eligibility list at least once a month to the office of the appropriate election official, with a copy to the Attorney General and the attorney general of the State. The list shall contain the name of each eligible voter listed since the last list was certified and transmitted. The list shall be made available for public inspection beginning on the last business day of the month and in any event not later than the 45th day before an election, during normal business hours, for one period of 10 consecutive days, at the place where the persons listed filed their applications as set out in appendix A to this part, except that the list may be made available for public inspection in the same political subdivision at a place other than the place where the persons listed filed their applications when advance notice of this change is posted at the place where the persons listed filed their applications.

[30 FR 12392, Sept. 29, 1965]

Subpart C—Challenges to Listing on Eligibility List

§ 801.301 Scope.

This subpart prescribes the procedure that governs a challenge to a listing on an eligibility list under the Act.

§ 801.302 Basis of challenge.

A challenge to a listing on an eligibility list may be made only on the basis of fraud or that the challenged person does not have the prescribed qualifications.

§ 801.303 Time and place of challenge.

A challenge shall be filed within 10 days after the listing of the challenged person is made available for public inspection as provided in § 801.207 by delivering or mailing the challenge to the Examiner (State Supervisor), U.S. Office of Personnel Management, in the State involved at the address set out in appendix C to this part.

§ 801.304 Form of challenge.

(a) A challenge shall be under oath and shall contain:

- (1) The name and address of the OPM office to which it is submitted;
- (2) The date of submission;
- (3) The name and address of the challenger;
- (4) The name and address of his representative, if any;
- (5) The name and address of the challenged person and his certificate number as they appear on the eligibility list;
- (6) A written statement setting forth in plain and concise language the facts constituting the grounds for challenging the listing of the challenged person on the eligibility list;
- (7) Affidavits of at least two persons (one of whom may be the challenger) with their addresses, stating that they have personal knowledge of the facts that constitute the grounds for challenge and setting forth those facts in plain and concise language. Each affidavit shall be sworn to before a person authorized to administer oaths; and
- (8) A certification that service of the challenge on the challenged person has

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been made as required by paragraph (b) of this section.

(b) The challenger shall file his challenge in triplicate and shall have a copy of it served on the challenged person. That service may be in person or by first-class mail properly addressed with charges prepaid.

§ 801.305 Rejection and docketing of challenge.

(a) When a challenge is not timely filed or served or does not meet the requirements of § 801.304, it shall not be entertained but shall be rejected.

(b) When a challenge is not rejected under paragraph (a) of this section, the hearing officer shall place it on the docket.

§ 801.306 Summary denial of challenge by hearing officer.

If on review of a challenge a hearing officer determines that the information, even if true and known at the time of listing, would not have disqualified the challenged person, he shall issue a decision denying the challenge without further proceeding and notify the parties of his reasons for this decision.

§ 801.307 Notice of hearing.

After docketing, and if not denied under § 801.306, the challenge shall be set for hearing. The challenger and the challenged person shall be sent a notice of the date, time, and place of the hearing and advised of the rights and duties of the parties including the right to request a subpoena. The notice of hearing shall be dated and the date of the hearing shall not be less than 5 days from the date of that notice. The notice of hearing shall be served on the challenger and the challenged person either personally or by mail.

§ 801.308 Rights and duties of parties.

(a) The challenger has the burden of proceeding and proof at the hearing and shall appear personally or with a representative to prosecute the challenge, except that when a continuance is sought the challenger may appear by a representative. If a challenger fails to appear personally to prosecute the challenge, the hearing officer shall issue a decision denying the challenge

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or make such other disposition as is warranted by the circumstances.

(b) The challenged person has the right to appear at the hearing personally or by or with a representative, and to present witnesses and documentary evidence in his behalf.

§ 801.309 Continuance.

A request for a continuance of a hearing shall be filed with the hearing officer at the place and on the day of the hearing. The hearing officer shall not grant a continuance except under extraordinary circumstances.

§ 801.310 Hearing.

A hearing shall be open to the public and held at the time and place specified in the notice of hearing. A hearing shall be recorded by an official reporter designated by the OPM, under the supervision of the hearing officer. A party may obtain a copy of the transcript from the official reporter at a rate not in excess of the maximum rate fixed by contract between the OPM and the reporter.

§ 801.311 Powers of hearing officer.

In addition to the powers otherwise vested in a hearing officer by this subpart, a hearing officer shall have the power to:

- (a) Administer oaths and affirmations;
- (b) Issue and quash subpoenas;
- (c) Regulate the course of the hearing;
- (d) Rule on offers of proof;
- (e) Permit a party to withdraw from a hearing on a showing of good cause;
- (f) Limit the number of witnesses whose testimony would be cumulative;
- (g) Deny a challenge for failure to prosecute;
- (h) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing; and
- (i) Take any other action in the course of the hearing consistent with law that is necessary to carry out the spirit and intent of the Act.

§ 801.312 Witnesses.

(a) A witness shall testify under oath or affirmation and shall be subject to cross-examination.